

**A GUIDE TO
THE HELP AMERICA VOTE ACT OF 2002
(H.R. 3295/P.L. #107-252)**

Election Administration and Replacement of Voting Equipment Grants (Title I)

Title I of the bill authorizes the Administrator of General Services to administer payments in the amount of \$650 million to: (1) implement election administration requirements under the act; and (2) replace punch card and lever machine election equipment. Authorized appropriations under this section are divided evenly between the two. Payments are to be made as soon as funds are appropriated.

Election Administration Requirements (\$325 million). Each Governor must notify the administrator within six months of the act's enactment that the monies will be used in accordance with the act. States are guaranteed a minimum payment of \$5 million. Remaining funds are allocated according to formula equal to the voting age population of each state divided by the total voting age population of all states. The Governor may use the funds as provided in the act. Intended purposes include:

- complying with federal election requirements under Title III of the act;
- improving elections for federal office;
- developing a state plan for election improvements as provided in the act;
- training election officials, poll workers and volunteers;
- improving voting systems;
- increasing voter participation;
- improving accessibility of polling places, including providing access for the disabled; and
- improving voter fraud investigation.

Replace Punch Card and Lever Election Equipment (\$325 million). Each state must certify to the administrator that within six months of the act's enactment the state will replace punch card and lever voting systems in qualifying precincts by the November 2004 general elections. If a state certifies that, for good cause, it will be unable to meet this deadline, the bill provides a waiver to January 1, 2006. A qualifying precinct is a precinct that used a punch card or lever voting system during the November 2000 elections.

If state legislation is required to fulfill these requirements, certifications may be submitted once legislation is enacted. However, the state must submit an initial certification within the six-month time period pending enactment of state legislation. Whether state legislation is required will depend on individual state law.

States that already have replaced equipment on or after January 1, 2001 may use the funds under this section as reimbursement payments.

Authorized appropriations under this section equal \$4000 multiplied by the number of qualifying precincts. If this amount exceeds the authorized appropriation of \$325 million, the administrator will reduce this amount accordingly. A state that fails to meet deadlines under the act must return funds in a proportion equal to the percentage of funds provided to noncompliant precincts.

Election Assistance Commission (Title II)

Title II of the bill establishes a four-member “Election Assistance Commission (EAC).” Members are appointed by the President with Senate approval. Commission duties include the following:

- maintaining a clearinghouse of information for the compilation of information and the review of procedures for the administration of election procedures, including the testing and certification of election equipment;
- administering voluntary guidelines for election requirements under the act; and
- administering the Election Assistance Program and the Help America Vote Program as established under the act.

The commission is authorized to hold hearings, request information from federal agencies, use postal services, and contract with private groups and federal agencies.

Boards and commissions established under the Assistance Commission include:

- an Election Assistance Commission Standards Board composed of 110 state and local officials;
- an Election Assistance Board of Advisors composed of 37 members representing state and local groups, including two members appointed by the National Governors Association; and
- a Technical Guidelines Development Committee composed of members of the Standards Board, the Board of Advisors, and other groups.

Boards and commissions develop and approve voluntary guidelines for the improvement of election administration. All recommendations must be adopted by the Election Assistance Commission.

Election Assistance Grants (Titles II and III)

The Election Assistance Commission is required to make election assistance “requirements payments” to states. Appropriations authorized under this section include \$1.4 billion for fiscal year (FY) 2003, \$1 billion for FY 2004, and \$600 million for FY 2005.

As in Title I of the act, funds are allocated according to a formula equal to the voting age population of each state divided by the total voting age population of all states with a guaranteed minimum payment equal to one-half of 1 percent of the total appropriation for each year.

State Election Reform Plan. To receive funding, the Governor of each state must submit to the commission a self-certified plan developed by state and local officials and private citizens describing how each state will:

- improve election administration procedures;
- provide for voter education;
- distribute funds;
- establish a state election fund, as required under the act;
- allocate federal funds;
- avoid supplantation of state funds with federal funding;
- adopt performance goals and measures;
- adopt complaint procedures, as required under the act;
- manage funds under Title I of the act for election administration improvements;
- manage the plan; and
- address plan changes from previous fiscal year.

Each state must also provide a description of the planning committee.

The state plan must be submitted for public notice and comment at least 30 days prior to the plan's submission. States are not subject to suit for provisions contained in the plan (safe harbor), except for criminal acts or omissions. States that fail to submit a plan must receive approval from the U.S. Attorney General that it meets the requirements of the act or self-certify to the commission that the state meets the act's requirements.

Other Requirements. In addition to submission of the state plan, to receive funding each state must self-certify that the state:

- has developed a plan for implementing complaint procedures, as required under the act;
- is in compliance with other federal election laws;
- will not use funds for purposes inconsistent with the act; and
- has appropriated state funds equal to 5 percent of the federal funds received under the act (5 percent match).

States are required to establish an "election fund" consisting of federal funds and state funds appropriated under the act. If state legislation is required to establish the fund, the commission will defer disbursement of the federal funds until the election fund is created.

States may use a requirements payment as reimbursement for the replacement of voting equipment obtained after the November 2000 election. In the case of a multi-year contract for the replacement of voting equipment, states may use requirements payments for voting equipment obtained on or after January 1, 2001 except that the amount the state is required to contribute under state "maintenance of efforts" requirements must be increased proportionally. (Maintenance of efforts requirements: the bill requires that, when using requirements payments, state expenditures for election reform activities be maintained at a level equal to funding prior to November 2000.)

Grants to Ensure Access for the Disabled (Title II)

The U.S. Secretary of Health and Human Services is authorized to administer grants to state and local governments to make polling places accessible to the disabled, including the blind and visually impaired. Grants also may be used to provide information about the accessibility of polling places.

Payments are to be made no later than six months after the act's enactment. Authorized appropriations are as follows:

- \$50 million for FY 2003;
- \$25 million for FY 2004; and
- \$25 million for FY 2005.

If appropriated, funds will remain available until expended without fiscal year limitation.

To receive funding under this section, a state or locality must submit an application to the secretary describing the following:

- activities for which assistance is sought; and
- additional information as the secretary determines is necessary.

States must submit a report to the secretary not later than six months after the end of each fiscal year on the activities conducted with the funds.

Other Grant Programs (Title II)

Administered by the Election Assistance Commission. The following grants are administered by the Election Assistance Commission:

- \$20 million authorized for FY 2003 on voting technology improvements;
- \$10 million authorized for FY 2003 for pilot programs for the testing of voting equipment and technology; and
- \$200 thousand for FY 2003 to the National Student and Parent Mock Election Organization.

Administered By the U.S. Secretary of Health and Human Services. The following grant is administered by the U.S. Secretary of Health and Human Services:

- \$10 million authorized for FY 2003, FY 2004, FY 2005, and FY 2006 for protection and advocacy systems of each state to ensure full participation for the disabled in the electoral process.

Uniform and Non-Discriminatory Election Technology and Administration Requirements (Title III)

State Voting System Standards Required Under the Act

- The voter must be permitted to verify his or her ballot before the ballot is cast.
- The voter must be provided the opportunity to change his or her ballot before the ballot is cast.
- The voter must be notified before the ballot is cast if more than one candidate for a single office has been selected and the voter must be provided an opportunity to correct the ballot. States using paper ballots, punch cards, or mail-in ballots may meet this requirement by establishing a voter education program notifying the voter of the effect of casting multiple votes for an office and providing voters with instructions on how to correct a ballot.
- The system must have manual audit capacity, including a permanent paper record.
- The system must be accessible to the disabled.
- The system must provide alternative language accessibility.
- The system must comply with Federal Election Commission error rate standards in effect on the date of the act's enactment.
- Each state must adopt uniform and nondiscriminatory standards defining what constitutes a vote and what will be counted as a vote.

States must meet these requirements by January 1, 2006.

States are not prohibited from using a particular type of voting system used in the November 2000 election as long as the system meets the act's requirements.

Provisional Voting and Voting Information Requirements. States must enact provisional voting laws by January 1, 2004. Voters are required to sign a written affirmation that he or she is a registered voter and is eligible to vote in the election. A state or local election official must then verify the ballot. The state must provide written notice to the voter through a free access system (toll free telephone or Internet) that the ballot was or was not counted and, if not, why the ballot was not counted.

States also must post voting information at each polling place including:

- a sample ballot;
- voting instructions, including provisional voting instructions;
- mail-in and first-time voting instructions;
- voting rights information; and
- state and federal voting fraud laws.

Individuals voting after poll closing pursuant to a federal or state court order issued under state law in effect ten days or more before the date of the election must cast a provisional ballot.

Provisional voting requirements under the act become effective January 1, 2004.

Computerized Statewide Voter Registration List. Each state election official (Secretary of State) must establish a single, uniform, official, centralized, interactive computerized statewide voter registration list of every legally registered voter in the state. The list must assign a unique identifier to each voter and must meet the following requirements:

- be the single system in the state for storing and managing the list of registered voters;
- be coordinated with other state agencies and state databases;
- be immediately accessible by state and local election officials; and
- serve as the official voter registration list for federal elections.

The chief state election official (Secretary of State) is required to support local officials in expeditiously entering data into the database.

Each state must maintain the list by:

- removing ineligible voters and the deceased;
- providing adequate security measures to prevent unauthorized access to the list; and
- updating the database, including providing safeguards against removing eligible voters from the list.

States must comply with these requirements by January 1, 2004. States may, for good cause, self certify that additional time is needed and seek a waiver until January 1, 2006. These requirements do not apply to North Dakota, the one state in which there were no voter registration requirements as of the act's enactment.

Anti-Fraud and Voter Identification Procedures (Title III)

Verification of Voter Registration. Individuals registering to vote must provide a driver's license number or the last four digits of his or her social security number when registering to vote. (If an applicant has neither form of identification, the state must assign a voter registration number.) A state election official and the state motor vehicle authority must then match the information in the voter registration database with information in the motor vehicle database. The state motor vehicle authority and the Social Security Administration also are required to enter into an agreement verifying the accuracy of the voter registration information. (Current law requires all drivers' license applicants to provide a Social Security Number.)

Mail-in Registration. For first-time voters registering by mail, each state must require the individual to provide photo identification, or a copy of a utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the applicant. Identification must be provided when registering, when voting, or must accompany a mail-in ballot.

States are required to comply with mail-in registration requirements by January 1, 2004. Individuals registering to vote by mail must submit the required identification beginning in January 1, 2003.

An individual who desires to vote by mail or in person who does not meet the above requirements may cast a provisional ballot.

Enforcement Procedures (Title IV)

U.S. Department of Justice. The U.S. Attorney General is authorized to bring a civil action, seeking declaratory or injunctive relief, against any state that fails to meet the technology and administration requirements under Title III of the act.

State-Based Administrative Complaint Procedures. States are required to establish administrative complaint procedures. Any state receiving federal funds under the act is required to establish these procedures. A state not receiving funds under the act must certify to the Election Assistance Commission that it meets these requirements. State complaint procedures must follow the provisions listed below.

- The procedures must be uniform and nondiscriminatory.
- Any person must be able to file a complaint.
- Complaints may be consolidated by the state.
- A hearing on the record must be provided upon request.
- Each state may determine the appropriate remedy.
- The state must publish the result of the proceedings if no violation is found.
- The state must render a final decision within 90 days of filing, unless the complainant consents to an extension.
- If the state fails to meet the 90 day deadline, the complaint must be resolved under an alternative dispute resolution process.

Non-participating states (states not receiving or applying for federal funds) must submit a plan by January 1, 2004 to the U.S. Attorney General ensuring compliance with the act's requirements and must receive approval by the Attorney General of the state plan.

Voting Rights of Military Members and Overseas Citizens

Each state must designate a state office to be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used for absent uniformed services voters and overseas voters.

States must report to the commission the number of absentee ballots transmitted to overseas voters and uniformed service voters and the number of ballots returned by these voters.

States may not refuse to accept or process valid voter registration applications or absentee ballot applications submitted by uniformed services voters on the grounds that the voter submitted the application before the first date on which the state otherwise accepts applications submitted by non-service members. This provision becomes effective January 1, 2004.

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